

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In re Applications of)

RAYMOND W. CLANTON)

LOREN F. SELZNICK)

For Construction Permit for a
 New FM Station on channel 279A
 in El Rio, California)

MM DOCKET NO. 93-87

File No. BPH-911216MC

File No. BPH-911216MD

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OCT 13 1993

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: Honorable John M. Frysiak
 Administrative Law Judge

**REPLY OF SELZNICK TO OPPOSITION TO
 SECOND MOTION TO ENLARGE THE ISSUES**

Loren F. Selznick respectfully submits this Reply to the
 "Opposition to Second Motion to Enlarge the Issues", filed by
 Raymond W. Clanton ("Clanton") on October 5, 1993.¹

Clanton conspicuously does not even respond to Selznick's
 two principal arguments in support of enlargement.

A. The Financial Issue

1. A financial issue is warranted because Clanton's
 financial plan is inherently unclear. See generally Weyburn
Broadcasting L.P., 984 F.2d 1220, 1229-31 (D.C. Cir. 1993).

¹ This motion is timely. Selznick's Second Motion to Enlarge Issues was "based upon newly discovered evidence contained in the September 7, 1993 Petition for Leave to Amend", not in the December 10, 1991 document to which Clanton refers (Opp. at 2). Indeed, Clanton's "correction-of-an-oversight" argument was made clear only in the Petition for Leave to Amend. The December 10, 1991 document itself provided no context, no argument and, thus, had little meaning to Selznick until the filing of Clanton's Petition for Leave to Amend and his attached September 1, 1993 Amendment.

2. On September 7, 1992, Clanton amended his FM application to advise the FCC that his "net liquid assets," with which he proposes to fund his FM project, had decreased approximately \$175,000 to \$275,000.² At that time, his cost estimate of \$204,155 remained unamended. Selznick reasonably concluded at that time that Clanton's projected costs could be met -- with a \$70,000 cushion -- from Mr. Clanton's \$275,000 in net liquid assets.

3. Last month, Clanton changed his financial plan. Moreover, he announced that the change would be effective retroactive to his December 16, 1991 application. Clanton's Amendment reported, for the first time, that his December 1991 application should have listed his wife as a committed financial source on which his "reasonable assurance" of financial qualifications was and is based. See Petition for Leave to Amend, filed September 7, 1993 (and attached Amendment, dated September 1, 1993).

4. However, Clanton's Amendment, supra, is fatally ambiguous about whether his current financial plan includes his wife's funds or not. He does not provide a straight answer in any of his pleadings or declarations to date. Clanton is either chronically confused or deliberately playing games.

² Clanton's December 1991 application (Section III) stated his available net liquid assets at \$450,000.

5. If Clanton does not need his wife's \$86,000 to meet his \$204,155 cost estimate, then the recent Amendment -- allegedly to "correct" his 1991 application -- makes no sense.

Stated bluntly, if Clanton really has at least \$275,000 in net liquid assets available to meet his \$204,155 cost estimate, then whether his wife might give him \$86,000 for the FM project or whether he "might" obtain \$86,000 from any other source is irrelevant to this case.

As long as Clanton's reliance on HIS net liquid assets is sufficient to meet his projected costs, it is irrelevant whether he "might" use \$86,000 of his wife's funds (or someone else's funds) at the time of construction.

6. If, on the other hand, Clanton needs his wife's \$86,000 at this point -- because his net liquid assets have continued to decrease as his self-financed construction of the Arizona "Fun Park" drains away his resources -- then Clanton simply should say so. In that case, Clanton merely needs to honestly -- with complete candor -- petition for leave to change his financial plan, as Selznick did last month. Clanton did file a Petition for Leave to Amend. But, unlike Selznick's Amendment, he asserted that no change had occurred. Clanton asserted that he simply wants to correct ab initio a "mistake" that he made in December 1991. But, as discussed above, if he really intended ab initio to list his wife as a financial source, then his ambiguity

today -- saying he "may" use her funds (Amendment, supra) -- is untruthful.

7. In sum, Clanton cannot have it both ways. He either relies currently on his wife's \$86,000 funds or not. If not, then the Amendment is irrelevant. If so, he is not being candid in saying he "may" rely on them. Until the FCC knows what an applicant's financial plan truly is, a substantial question exists and a hearing is necessary. Cf. Sunbelt, 8 FCC Rcd ____, FCC 93-440, released September 23, 1993, at note 4 (inconsistent testimony about financial plan); Weyburn Broadcasting, L.P., supra, 984 F.2d at 1229-31.

B. The Misrepresentation Issue

8. Clanton also does not respond directly to Selznick's request for a misrepresentation issue.

9. Selznick's motion questions whether Clanton has misrepresented the facts or lacked candor with respect to his December 13, 1991 financial certification. See Second Motion to Enlarge Issues, filed September 23, 1993, at 5-6. Specifically, Selznick questions whether Clanton is being entirely candid with the FCC about his knowledge, on December 13, 1991, regarding the ownership of his wife's mutual fund.

10. In Clanton's September 7, 1993 Petition, he asserted the need to correct an error made in his December 1991 application. Clanton asserted that, in executing the financial certification on December 13, 1991, he believed his wife's mutual fund "to be his own." Id. at 1.

11. The evidence does not reasonably or substantially support Clanton's assertion that, on December 13, 1991, he thought the mutual fund "to be his own." Only three (3) days prior to Clanton's affirmative financial certification -- that he was the only source for the needed funds to build his FM station -- Clanton had obtained his wife's signature on a document that plainly reveals that the mutual fund is his wife's separate property. See Letter, dated December 10, 1991, attached to Clanton's Petition for Leave to Amend, filed September 7, 1993.³ It strains credulity to contend that, within a three day period, Clanton "forgot" that he had requested his wife to sign a document in which she pledged her funds to his FM project. Indeed, that December 10, 1991 document -- prepared by Clanton's attorney -- appears to be the only external contingency that had to be completed prior to Clanton's execution of the application on December 13, 1991.

Frankly put, how does an applicant reasonably "forget" on December 13th to list a financial source that committed to being a financial source only 3 days earlier, on December 10th at the express request of the applicant.

Clanton's initial, irrational explanation, coupled with his failure to address this core matter any further, raises a substantial question of fact that requires a hearing. Cf.

Weyburn Broadcasting L.P. v. FCC, supra 984 F.2d at 1232; David Ortiz Radio Corp. v. FCC, 941 F 2d 1253, 1259-61 (D.C. Cir 1991);

³ There still are questions about the letter itself that Clanton's attorney instructed him not to answer at Clanton's October 4, 1993 deposition.

WHW Enterprises, Inc. v. FCC, 753 F.2d 1132, 1141 (D.C. Cir.
1985).

CONCLUSION

The requested issues should be ADDED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Thompson", written over a horizontal line.

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October 13, 1993

CERTIFICATE OF SERVICE

I, Karen D. Anderson, do certify that a copy of the foregoing "Reply of Selznick to Opposition to Second Motion to Enlarge the Issues" was served by prepaid, First Class U.S. Mail on this 13th day of October 1993, on the following:

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* By Hand

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